IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 785 of 2006

Umesh Sethi
S/o Sri Amar Nath Sethi
R/o 59, Adarsh Nagar
Rishikesh (District Dehradun) .....Applicants

Versus

1. State of Uttaranchal
2. Satish Gupta
   S/o Sri B.S. Gupta
   R/o Mukti Dham Swarg Ashram
   Rishikesh (Distt. Dehradun) .....Respondents.

Shri Siddharth Sah, learned counsel for the applicant.

Hon'ble Prafulla, C. Pant, J.

Heard Shri Siddharth Sah, learned counsel for the applicant.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr. P.C.), the petitioner has sought quashing of the proceedings in criminal case No. 302 of 2005 Satish Gupta Vs. Umesh Sethi, relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881, and also the one punishable under Section 420 of India Penal Code, 1860 (for brevity herein after referred as I.P.C.). The applicant has also challenged the summoning order dated 10.05.2005, whereby the applicant has been summoned in aforesaid complaint case relating to the aforesaid two offences.

I have gone through the entire complaint, which is Annexure-1 to the affidavit. The said complaint if taken to be true, marks out a case of offence punishable under Section 138 of Negotiable Instruments Act, 1881 only. There is no mention in the complaint of offence punishable under Section

420 I.P.C. The impugned order passed by the trial court shows that while the order summoning the accused (present applicant) relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881, does not suffer from any illegality, the order summoning the applicant, relating to offences punishable under section 420 I.P.C. is manifestly erroneous in law as neither there are ingredients of said offence are made out from the allegations of the complaint nor in the statement of the complainant recorded under Section 200 of Cr. P.C.

In the above circumstances, this petition is disposed of quashing partly the impugned order dated 10.05.2005, summoning of the applicant relating to offence punishable under Section 420 I.P.C. However, the trial court may proceed further in the impugned complaint case relating to offence punishable under Section 138 Negotiable Instruments Act, 1881. While disposing of the petition, it is observed that the petitioner would be at liberty to raise all other pleas relating to his innocence before the trial court. (All pending applications in this case, also stand disposed of.)

(Prafulla, C. Pant, J.)

Dt. 10.10.2006
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